IN THE

Supreme Court of the United States.

BOARD OF TRADE OF THE CITY OF CHICAGO, *Petitioner*,

vs.

CHRISTIE GRAIN & STOCK COMPANY ET AL., *Respondents.*

No. 224

May it Please the Court:

The purpose of the argument, now ventured upon, is to show, that the Chicago Board of Trade cannot have a property interest in quotations made by transactions in its grain and provision "pits," unless equity will protect by injunction quotations of prices made by the fluctuating operations of a "bucket shop," or those of a common gaming house.

The Chicago Board of Trade was chartered February 18, 1859, to maintain a commercial exchange, to

inculcate principles of justice and equity in trade, to acquire and disseminate valuable commercial and economic information, to secure its members the benefits of co-operation in the furtherance of their legitimate pursuits and to do and carry on any business usually conducted by boards of trade.

The business of the board is that of maintaining an exchange wherein is conducted the purchase and sale of grain and provisions for immediate delivery and dealing in the same commodities for future delivery. Transactions of the first mentioned class are designated "cash" transactions. Those for future delivery are called "options" or "futures." The "cash" transactions are conducted in one part of the exchange hall, set apart for that use; the "futures" are dealt in only in what the bill characterizes as "pits," which, whether bottomless or not, afford in the nature of the operations conducted in them, abundant reason for their characterization.

There is little dispute as to facts established by the evidence. The quotations in which the board claims property are made in the "pits" and are the continuous and fluctuating prices made from moment to moment, during the business hours of the exchange on each day on which the exchange is open for the creation of a future market. The quotations are gathered and turned over to a telegraph company, under contract with the board and are scattered broadcast over the country among brokers who conform to

the conditions of the contract between the board and the telegraph company. The transactions in the "pits" cover millions of bushels of grain each day and millions of pounds of "provisions." The astounding volume of this business, as going to its illegal quality, will be commented on as the argument proceeds. To enable the "traders" in the "pits" to successfully settle their trades, the board has established a "clearing-house" system, whose elastic advantages and frictionless operations will likewise be descanted upon as the argument proceeds. Those who "deal" in the "pits" and by their "dealing" make the continuous quotations, are enabled to make transactions which the choice vernacular of the "pit" designates as "spreads and straddles," "hedges," "ringings-out," "transfers of the option" and "scalps." The vast operations in the "pits" are limited, in greatest part, to transactions thus designated and as the argument proceeds, an attempt will be made to show their significance.

The quotations which the complainant seeks to protect, or in which it seeks to have a property right of exclusive use adjudged in itself, grow out of a business, or aggregation of acts, which relates to dealings in futures, in which not over two per cent in a volume of billions result in deliveries, but which are settled before the contract day of delivery by paying and receiving the difference between the contract price and the settling price as fixed on the day

of settlement; to dealings in commodities which, as represented by the volume of the transactions, in the year (sometimes in a few months), largely exceed the entire production of the year of such commodities in the United States; to dealings which involve merely gambling upon "hedges" against a possible decline in price, there being no intention to deliver the property dealt in, or to receive it if tendered under the trades; to dealings which involve merely gambling upon "spreads" and "straddles," which exclude all idea of bona fide transactions; to dealings qualified by "stop orders" and "transfers of trades," which are obnoxious to the moral sense; to "scalps," which are the last expedient of the reduced and threadbare habitue of the "pit," and to "rings" and the "clearing" house, without whose convenient, recordless details and ramifications, gamblers of the "pit" could not conduct their operations.

The statutes of Illinois, July 1, 1887, . . . Curtis Annotated Stat., page 165, make it unlawful for any corporation . . . or person to keep or cause to be kept within the state any bucket shop, office, store or other place, wherein is conducted or permitted the pretended buying or selling of . . . grain, provisions or other produce, either on margins or otherwise, without any intention of receiving and paying for the property so bought or of the property so sold, or wherein is conducted or permitted the pretended buying or selling of such property on mar-

gins; or when the party buying any of such property or offering to buy the same does not intend actually to receive the same if purchased, or to deliver the same if sold, and the keeping of all such places is hereby prohibited.

A section of the statutes provides that it shall not be necessary in order to commit the offense defined in the first section, that both the buyer and the seller shall agree to do any of the acts therein prohibited, but the crime shall be complete against the corporation or person pretending or offering to sell, or pretending or offering to buy, whether the offer to sell or buy is accepted or not; and any corporation or person who shall communicate, receive, exhibit or display in any manner any such offer to so buy or sell, or any statements or quotations of the prices of such property, with a view to any such transaction, shall be deemed an accessory.

In the case of **Soby vs. The People**, 134 Ill., page 66, it appears that the plaintiff in error had an office in Jacksonville, Illinois, where he transacted a grain commission business as agent of Lindbloom & Co., members of the Chicago Board of Trade. He received daily quotations from Chicago and other markets on wheat, corn, oats and other commodities, which he displayed, as received, upon a blackboard for public inspection. He professed to buy and sell such products on the Chicago market, receiving from his customers an agreed margin per bushel on wheat and

corn. The object of his displaying quotations on the blackboard was to show his customers what the market was. He testified that he never asked the intention of customers, and that they could have grain delivered to them if they wished.

It appeared from the evidence that one Charles James bought 5,000 bushels of wheat and 5,000 bushels of corn and put up with the plaintiff in error 2 cents margin per bushel. He bought in October for May delivery and closed the deal in a few days at an advance on his margins. He stated that his intention was to make money out of the transaction by buying and selling on the fluctuations of the market. He neither got nor delivered any corn when he bought or sold.

The Supreme Court of Illinois, in passing upon the case, stated that it was clear from the evidence that the plaintiff in error occupied an office or place wherein was conducted or permitted the buying or selling of grain or other products on margins, without any intention of receiving and paying for the property so bought or of delivering the property so sold; and wherein was conducted or permitted the pretended buying or selling of such property on margins, and where the party buying such property or offering to buy the same did not intend actually to receive the same if purchased or of delivering the same if sold. It was held that the keeper of such a place could not shield himself from criminal respon-

sibility behind the fact that he made no inquiry of his customer. The statute was held to be preventive in its character and to be aimed at the keeping of places where gambling in grain is permitted. "The keeper must know that the transaction is gambling, or in good faith have just reason to believe that the buying or selling is not within the intended prohibition of the statute."

It was apparent to the court that the legislature for the purpose of carrying into effect their expressed intention of preventing the evils resulting from bucket shops and bucket shopping, and to suppress the vice of gambling in grain and other products so detrimental to the interests and welfare of the people, had determined to close, suppress and prohibit the keeping of places where the practice of bucket shopping or gambling in such commodities is permitted.

In a later case, that of **Weare Commission Co. vs. The People**, 209 Ills. 528, the object in presenting the case to the court, as stated by the counsel for the plaintiff in error, now the counsel for the Chicago Board of Trade, was to bring the construction of the act of 1887 again to the attention of the court, "in the hope that the decision in the Soby case may be more accurately confined to its facts and a further construction of the statute had, which, while not impairing at all its efficacy to accomplish the purposes sought in its enactment will not work . . . unjust consequences to legitimate traders."

The facts in the Weare Commission Co. case were that the plaintiff in error, which was a member of the Chicago Board of Trade, kept a branch in the city of Princeton, Illinois, where it was represented by an agent. When a customer wished to buy for future delivery he gave his order to the agent and deposited with him a margin of not less than two cents per bushel on grain to secure the plaintiff in error against loss by reason of the execution of the order. The agent would thereupon send an order by telegraph to the plaintiff in error at Chicago, and the plaintiff in error would buy on the Chicago Board of Trade the amount of grain so ordered to be bought by such customer. The purchase would always be made in the name of the plaintiff in error, in accordance with the rules and regulations of the board of trade, and the plaintiff in error would enter the transaction in the account kept by it with the customer.

The plaintiff in error was charged with keeping an office in Princeton wherein was permitted the pretended buying of grain without any intention of receiving and paying for it. The plaintiff in error, as in the case of Soby, was convicted in the circuit court, prosecuted a writ of error to the appellate court, where the judgment was affirmed; and, in confirming the judgment of both the lower courts, the supreme court took occasion to remark that the statute presumes, and the decision in the Soby case presumes, that where a man keeps a place where gambling in grain

is permitted, he must necessarily intend to permit it, otherwise he would not keep the place where it is carried on by other parties.

The court remarked that it was contended that the object of the act of 1887 was merely to suppress bucket shops and bucket shopping. But it was held in **Soby vs. The People** that the act was intended to go further, and to suppress all places wherein was conducted or permitted gambling in grain or produce in any form. It makes no difference whether the places or offices where such gambling is conducted are the offices of commission merchants or members of the board of trade of Chicago or not. The court approved the opinion of the appellate court in stating that it made no difference whether the real intention of the parties was formally expressed in words or not, if the facts and circumstances in proof showed that it was the real understanding that there should be no actual purchase and no delivery or acceptance of the property involved in the contract, but merely an adjustment of damages upon differences. The intention of all the parties was to be determined from all the circumstances; and, where transactions of a prohibited character were carried on in the office of a particular person and with his aid and concurrence, the presumption of his knowledge of what was going on was made by the law, without any requirement of proof on the part of the people or prosecution. The court, in the most emphatic and unqualified manner, re-

affirmed the doctrine of **Soby vs. The People**, thereby doubtless indicating to the counsel for the plaintiff in error that, confining the decision in the Soby case accurately to its facts, while it did not work unjust consequences to legitimate traders, yet did inferentially establish the fact that the Chicago Board of Trade to all intents and purposes conducts a bucket shop, or a place wherein bucket shopping, or what is commonly known as bucket shopping, is permitted, sanctioned and carried on. The transactions shown by the evidence in the two cases now on certiorari to have been had in the "pits" of the Chicago Board of Trade, conducted in the office of a broker, would necessarily evidence a violation of the statute, in that they would prove that a place was kept in which "bucket shopping" was permitted or carried on. No such divinity doth hedge the Chicago Board of Trade as to except it from the consequences of its own violation of the law.

In the main case, decided by the Court of Appeals for the Eighth Circuit, it was the unanimous conclusion of the court that there was absolute unanimity in the evidence of the president and a large number of the members of the board of trade to the effect that much the larger part of the transactions had on the floor of the exchange were such that it was not expected or understood in them that there would be any delivery of the article nominally dealt in, but that the same would be carried through and

settled by methods clearly devised to avoid the need of actual delivery. It was found that the admission of the witnesses varied as to the percentage of the transactions in which actual delivery was contemplated or had, running from 1 to 15 per cent., thus proving that at least 85 and more probably 95 per cent. of the transactions would come under the condemnation of the Illinois statute. The details of the testimony are found in the opinion of Judge Thompson in the case of the **Board of Trade vs. Odell Commission Co.**, 115 Fed. 574. In that case and in **Board vs. Donovan Commission Co.**, 121 Fed., upon consideration of substantially the same evidence, the conclusion was reached that over 90 per cent. of the transactions had on the floor of the exchange hall maintained by the Chicago Board of Trade were purely gambling transactions. The court of appeals concluded that the evidence clearly established the fact that the Chicago Board of Trade maintained and maintains in its exchange hall a place wherein transactions coming within the inhibition of the statute are permitted and carried on, and the preparation and sending out of the continuous quotations of prices based upon these forbidden transactions are intended to aid its members as well as outsiders in engaging in speculating and gambling on the rise and fall of the market, and therefore in both these particulars the board of trade violated and violates the plain provisions of the statute.

In the case against **Kinsey Co.**, 130 Fed. 507, in the Seventh Circuit, the master found as follows:

"The transactions conducted in the 'pits' of the complainant association, while they are of the same general character, are divisible into two classes, which are described by members of the board of trade as **hedging** transactions and **speculating** transactions, respectively. Of the members of the complainant association who are engaged in business in the exchange hall the number conducting speculative transactions is between one-third and one-half of the total, and practically all of such members conduct a **hedging** business.

"The principals who are engaged in hedging transactions are, generally speaking, either grain merchants, millers or manufacturers of grain products. The method of such principals is this: When they have bought grain in the country or in city warehouses which they propose to hold for future sales to domestic or foreign purchasers they at once sell in the pits of the complainant association an equal amount of grain; or, on the other hand, if they have sold to domestic or foreign purchasers grain or grain products, for future delivery, they at once buy in the pits of the complainant association an equal amount of grain for future delivery at times corresponding with the times of their selling contracts. And thus when they have contracts of purchase they have contracts of sale for future delivery in the pits practically even with

their purchases, and if they have contracts of sale with domestic or foreign purchasers, they have contracts of purchase for future delivery in the pits practically even with such contracts of sale. The object of such hedging is to insure against loss by fluctuation in the market in the commodity which the principal is carrying or which he has sold in advance of purchase and manufacture upon a time contract. A hedge must always be against a cash commodity.

"A speculative transaction is not based upon a cash commodity primarily. In effect it is based upon the confidence which on the one hand the seller of a commodity for future delivery has in his personal opinion that the price of the commodity sold will by the time of delivery have so declined that he can purchase the commodity for less than his selling price and thus make a profit, and while on the other hand, the buyer has his personal opinion that the price of the commodity bought will so advance by the time of delivery that the commodity bought will be worth more at the time of delivery than it was at the time of purchase and that he will thus have a profit. It is possible under the rules, usages and practice of the complainant association for the seller and the buyer, respectively, if either changes his opinion, to buy or sell in the "pits" the commodity which he has previously sold or bought, as the case may be, for the same time of delivery; while this procedure is in form the same as hedging; it is not designated

as "hedging," but is styled as "spreading." It is also possible under the rules, usages and practices of the complainant association for a member of the complainant association to make such counter contract of purchase or sale during the same day that he has under an original contract of sale or purchase, and thus within the day or within a few days to have his advantage of profit or to adjust his disadvantage of loss; such a course of business is designated "scalping."

"The evidence does not contain sufficient data upon which to predicate an estimate of the aggregate volume of business conducted in said pits daily, monthly or yearly; it does appear, however, that the volume of such business is enormous; one firm conducted transactions in wheat daily, aggregating 1,500,000 to 2,000,000 bushels, and in corn 1,000,000 bushels daily; another firm's transactions in wheat daily amounted to 6,000,000 bushels; a third firm's transactions in wheat daily amounted to 4,000,000 bushels; a fourth firm's transactions amounted to 1,000,000 bushels daily; a fifth firm's transactions in all grain amounted to 1,800,000 bushels daily, and a sixth firm's transactions in all grain amounted to 2,000,000 bushels daily. While it is true that the business of these six firms in the pits is much larger than the business of any other six firms conducting transactions in the pits, and that it would not be proper to say that the average business is a proper average of each of the

persons conducting transactions in the pits, it is nevertheless true that it is fairly deducible from the evidence that the aggregate business transactions in grain was largely in excess of the total wheat and corn production of the entire United States during either of the years 1900 and 1901, and was many times over the entire receipts in Chicago of grain during each of said two years of 1900 and 1901, and of such receipts in Chicago less than twenty per cent. inspected up to grades of grain which could be delivered upon time contracts made by said sales and purchases in the pits. **It is also true that a decrease in the total grain productions of the United States does not cause a proportionate decrease in the volume of business done in the 'pits' of the complainant association, but on the contrary such business is larger during a year in which there is a shortage in the grain crop.**

"Under the rules, usages and practice of the complainant association, all time contracts made in the 'pits' are carried until it is possible to close them as between members of the complainant association, by either of three methods of settlement, namely, the method called 'direct settlement,' the method called 'rings' or ringing out,' and the method of delivery by delivering warehouse receipts physically or 'by notice.'

"Most time contracts made in the 'pits' are adjusted as between members of the complainant association before the specified time of delivery arrives,

by either of the first or the second of the above named methods. Direct settlements are effected by offsetting similar contracts at the close of the business hours of each day in the following manner: As soon as is practicable after the close of business in the 'pits' each broker (individual, firm or corporation) conducting business in the 'pits' takes from the day's transactions on his books the contracts similar as to amount and time of delivery to counter contracts made with other members of the complainant association, and ascertains therefrom the difference of the aggregate prices of such similar contracts; and if the difference be in his favor, the amount of such difference is charged to the other party in such counter contracts, and if the difference is against him, such difference is credited to the other party to such counter contract. The following is a simple illustration: If during the day Broker A has sold to Broker B 5,000 bushels of December wheat at 75 cents per bushel, and Broker B has sold to Broker A 5,000 bushels of December wheat at 76 cents per bushel, after offsetting the contract at 75 cents per bushel, there is a difference in B's favor of one cent on each bushel, or $50. This offsetting difference in cash is placed as a debit or credit, as the case may be, upon the clearing house sheet (hereinafter described) of the respective brokers, parties to said counter or offsetting contracts.

"The 'ring' method of settlement is as follows:

Each broker (person, firm or corporation) conducting business in the 'pits' has an employe who is called a 'settlement clerk,' who keeps a record of all his employer's transactions in the 'pits;' the complainant association furnishes a room wherein all of such settlement clerks meet at stated hours each day and compare their respective books called 'settlement books,' which are required by the complainant association to be kept by each broker. Upon comparing their respective books, said settlement clerks ascertain what, if any, outstanding contracts may be offset by some other corresponding time contract made by the parties with other members of the association, and which of such contracts are, by consent of the parties thereto, permitted to be offset, and thereupon, under the rules of the complainant association, are deemed to have been settled, provided the requirements of sections 6, 7, 8 and 9 of rule 22 of the complainant association are met as therein provided with reference to the clearing house sheet and other details of settlement therein specified. . . . .

"Theoretically and in bare outline, an illustration of the 'ringing-out' method is as follows: Broker A sells to Broker B 5,000 bushels May wheat, Broker B sells to Broker C the same amount, Broker C sells to Broker D the same amount and Broker D sells to Broker A the same amount; by consent of Brokers A, B, C and D all of these time contracts are deemed discharged and by novation there is sub-

stituted a contract wherein Broker A, the initial seller in the series of discharged contracts, sells to Broker D, the last buyer in the series of discharged contracts. The clearing house sheets of the complainant association in evidence in this suit show that the actual process of 'ringing-out' time contracts by elimination and substitution is much more complicated than the outline illustration, but that illustration exhibits the principle of the process. Among the daily transactions in complainant's 'pits' there are 'hedging' contracts, 'spreads' and 'scalping' contracts; and all of these forms of time contracts are adjusted by both the 'direct' method and the 'ring' method of settlement. Upon the question that (what) part of the transactions in the pits are adjusted by the 'direct' method and the 'ring' method of settlement the evidence is not very satisfactory. It tends to show, however, and I accordingly so find, that at least three-fourths of the total transactions in the pits are adjusted by the 'direct' and the 'ring' method of settlement.

"In the event that said time contracts cannot be settled by either the 'direct' method or the 'ring' method, they are and must be closed by a third method, namely, delivery under the rules and usages of the complainant association.

"The rules of the complainant association do not permit any person other than members of said association to make 'time' contracts upon the floor of

the exchange hall and all 'time' contracts made in the pits are contracts between the members of the complainant association, who are in said transactions respectfully sellers and buyers. The rules of the complainant association permit members of said association as between themselves and non-members to act as brokers in 'time' contracts made in the pits. In case a member of the complainant association in making a 'time' contract in the pits acts as a broker for an undisclosed principal, if such contract is settled by either the 'direct' method or the 'ring' method, such settlement does not discharge it so far as such undisclosed principal is concerned, as between him and his broker, but the latter is required under complainant's rules to substitute a duplicate 'time' contract with the two elements of identity, namely, like amount of grain or other commodity and like date of delivery, but not like price. If such substituted contract is not a duplicate, but differs from the original in price, the broker becomes principal as to difference in the prices between the original and the substituted contract, and if it is impossible for such broker to substitute either a duplicate or a similar time contract, the broker becomes principal as to the entire time contract instead of the original principal with whom he, as broker, in behalf of his own undisclosed principal, entered into said original contract.

"The 'direct' method of settlement and the 'ring'

method of settlement is not only an advantage to the members of the complainant association in that it relieves them from the responsibility of carrying their contracts with other members of the complainant association, but they have added to this advantage the benefit of the margins deposited with them by the undisclosed principals for whom they act as brokers. . . . .

"The complainant association has prescribed no method or means which shall be employed by members of said association for the purpose of ascertaining the intent of their respective customers with respect to the delivery or non-delivery of the commodity covered by any time contract.

"Every member of the complainant association acting in the pits as a broker for a non-member customer requires from such customer a deposit as security in each transaction conducted by him, and this fact is within the knowledge of the directors and executive officers of the complainant association. The rules of the complainant association authorize the members of said association who act as brokers to charge broker's commissions in amounts fixed by such rules. One of such commission charges is expressed in part as follows:

" 'For the purchase or sale and for the purchase and sale of property for future delivery, whether the contract for purchase or for sale be first made as follows:

"Using a member of the complainant association as his broker, a non-member thereof may become a party to a time contract as buyer or seller and at any time before the date of required delivery he may become a party to another contract in which he takes the opposite side to that held by him in the first mentioned contract; such counter or reverse time contract may be authorized in the same order which authorizes the first contract by including in said order a so-called 'stop-loss' order; when such contracts are made they may be settled and are often so settled as between the member of the complainant association who acted as broker and his non-member customer by the payment of the difference between the contract prices. The fact that such is the custom is a fact well known to the directors and executive officers of the complainant association.

"The rules of the complainant association provide for settlements of time contracts made in the pits when the seller does not deliver the property on the last day of the month of the stipulated delivery—the rules and usages of the complainant association fix such last day of the month as final day of delivery—by allowing the purchasers the privilege of electing: First, to consider the contract forfeited; second, to purchase the property on the market for account of the seller at 1:15 o'clock of the next business day; or third, by requiring a settlement with the seller at

the average market price of the property sold on the last day of the month of delivery."

It will be observed, that these findings are by a master, as the best possible under the evidence, and they certainly do not place the transactions and methods in a light commendible in equity.

The complainant—a board of trade corporation chartered to inculcate principles of justice and equity in trade—seeks to restrain the defendants from using, without its consent, these "continuous quotations" of prices of commodities made every moment by members of the complainant in their mutual dealings for alleged legitimate purposes in the "pits" of the exchange maintained by the complainant. The bill contains much that is praiseworthy in tone, as far as the use of terms of protestation goes, but, after all, upon scrutiny, is found to resolve itself into a theory of enforcement of an exclusive right of property in an alleged commodity which the complainant has appropriated to itself through the creation of its members. The complainant claims exclusive ownership in continuous quotations of prices made by its members in their constant dealings in its "pits," which are "collected" for the complainant and sold to telegraph companies, which are privileged, in turn, to sell to all persons whose business is pronounced legitimate by the complainant. Precautionary measures of prohibitive character have been taken to prevent the illegitimate dealer in options from access to the quota-

tions made by the **legitimate** dealers therein, and the defendants are sought to be enjoined because, as it is averred, they are not among the privileged and the **legitimate**, but in some unconscionable manner obtain these fruits, which are not of the labor of the complainant and devote them to uses which, if prevented, will enhance the "business" in the "pits" of the board of trade and add shekels by way of commissions in greater abundance to the stores of its members dealing, as they do, in **"futures"** on commissions, **"scalps"** in their own interest, **"hedges"** *pro bono* everybody, **"straddles"** and **"spreads"** for the benefit of whom it may concern, and who **"ring up"** in the **"clearing house"** the ultimate settlement of trades based solely upon the difference in the "pit" between the prices of the seller and the buyer, neither of whom has the faintest intention to receive or deliver the commodity in which he has dealt. The manifesto of the bill is, however, lofty and bigh sounding in its phrases, and it only remains to be seen whether the results of the war quite come up to its magnificent proportions.

The important and serious question presented by the record is whether the complainant can be held to have property in the "continuous quotations" of prices made in the grain and provision "pits" of its Exchange.

With no facts affecting the transactions out of which they grow, if one concedes that their continuous quality is a necessary result of great commercial activity, or if one regards the Exchange, rather than

the members, and considers the prices in the "pit" as essential to the welfare of trade, it can well be assumed that the complainant should be held to have a "species of property" in the continuous quotations. Before considering, however, with what infirmities the quotations are attended as affording property in themselves by reason of the place and circumstances of their creation, one cannot escape the reflection, that perhaps, after all, there is something to be said with reference to their quality of mere continuousness. With all due deference to the learned adjudications which have invested such quotations with the dignity of a species of property, it seems to me that at the outset one cannot lose sight of the fact that they are not necessary or essential to commerce. They are made in dealings in "futures." They are not made in dealings in "cash" commodities. Just what quality, essential to the requirements of commerce, quotations of prices for delivery in the future can have, it is not easy to perceive. What the necessities of commerce and trade are which can legitimately require a quotation of prices for the future to be made every minute during the trading hours of the Exchange, is even less readily perceived. It is a matter of common knowledge that the "continuous quotations" do not fix the price of the day. They may show the fluctuations in the "pit," but they convey to no one a basis of price for the day. The complainant does not, and could not under its charter,

provide for the making of the quotations. It merely permits its members to make them. That the members are not by the processes of the dealings in "futures" gathering information for the benefit of trade and commerce goes without saying. Why a miller in Rochester on February 27, 1905, should be advised what Schwartz, Dupee & Co., in the "pit" of the complainant think the delivery price of wheat should be in Chicago on some day in July, 1905—there being no day indicated—is not apparent to even the careful observer. It is obvious that the whole scheme of dealing in "futures" has been devised for speculation rather than the gathering of information necessary to trade or commerce. The farmer need not know at what price pork will perhaps be delivered in Chicago in some month in the distant future. It cannot afford the merchant a guide to his operations to tell him that on February 28, 1905, a string of fluctuating quotations showed great activity in the "pit" in May corn, or July pork, or June wheat. So that it is legitimate comment upon the quotations as "continuous quotations" that they answer no purpose for the necessary information or guidance of trade. Dupee, or Counselman, or Warren, or Rice may shriek themselves hoarse in the "pit" in February over May corn, but just why the yells should afford a right of property in the product of the yelling is a problem of modern necessities of trade which equity cannot solve.

The scheme of speculation in futures bears no relationship to sales for the account. The suggestions afforded by its conduct are wholly those which result from mere gambling operations.

Again, that the dealings in the "pit," and the quotations resulting therefrom, have been productive of the most deplorable conditions of wrong-doing, actual crime, suffering, sorrow and want, is matter of common knowledge. The complainant affords the opportunity for all of this doing and undoing. "What," said Mr. Justice **Blanford** in **Cunningham vs. Bank,** 71 Ga. 400, "is the transaction termed 'futures?'" It is a speculation on chances. "A betting on a game of faro, brag or poker cannot be more hazardous, dangerous or uncertain. Indeed, it may be said that these animals are tame, feeble and submissive compared with this monster. The law has caged them and driven them to their dens. They have been outlawed, while this ferocious beast has been allowed to stalk about in open mid-day, with gilded signs and flaming advertisements, to lure its unhappy victim to its embrace of death and destruction. What are some of the consequences of these speculations in 'futures?' The faithful chroniclers of the day have informed us, as growing directly out of these nefarious practices, that there have been bankruptcies, defalcations of public officers, embezzlements, forgeries, larcenies and death. Certainly no one will contend for one moment that a transaction

fraught with such evil consequences is not immoral, illegal and contrary to public policy." The system which enables these results to follow is not one which the chancellor will commend. "Prices"—"continuous quotations"—which lead to such results, or render them possible, ought not to be possessed of the quality of property of any description. A complainant which knowingly permits such conditions to obtain and seeks a monopoly of the gruesome privilege should not be heard in equity.

Consider the place of their origin—the "pit," the wheat pit, the corn pit,, the provision pit. That these pits are not completely of the bottomless degree is not the fault of the complainant. The catch word of their very designation—the "pit"—is a concession by their makers that equity should regard them with abhorrence. Consider the terms applicable to the transactions out of which they grow—the "hedge," the "spread," the "straddle," the "scalp," the "ring"—terms as expressive of the gambler's vocabulary as is the choice vernacular of the race-track, the "pool-room" or the "faro bank." Consider the fact as shown by the whole volume of evidence before the court, that transactions in futures are the principal business of the Exchange, and that ninety-eight per cent. of them are settled before the day of delivery by the parties paying and receiving the difference between the contract prices and the "market" prices as shown by the quotations on the day of settlement.

Consider the details of transactions permitted by the complainant to be done in the "pits" and which lead to a great part of the continuous quotations—just how much no one being able to tell.

Take the delectable episode of the "hedge." It is pure and simple gambling. It is the gambler's resort by way of insurance against possible loss. Rice, a witness, says that it is known as a matter of fact, that one is not required to deliver anything on these hedging contracts unless he so desires. He is under no obligation to either deliver or receive, but may go on the Board of Trade—of course in the "pit"—close out the contract and receive or give the difference in price. This is the usual practice on the Board of Trade, has been for many years, and is generally recognized by all millers, speculators, and grain dealers of the country. Warren, the president of the complainant, concedes that eighty-five per cent. of these hedging trades are "rung up" —that is, settled upon the difference in the "market," but the evidence shows the proportion to be much greater. Now, can it be successfully contended that quotations which are based largely upon such transactions are a species of property, rights in which can be protected in equity? It will not do to say that some quotations may be afflicted with this infirmity, but they are not all so afflicted. Equity will not stop to winnow the grain of honest transactions from the chaff of immorality.

Again, take the "spread" or the "straddle." What's

in a name? That which we call the "spread" would be just as malodorous under any other name. The transaction to which these terms of endearment among speculators are applied consists in "buying" a commodity in one "market" and "selling" it in another. A speculator may buy "July wheat" in St. Louis and sell the same quantity for the same delivery in Chicago, on the assumption that the relative conditions between the two markets for the same article will widen before the time of delivery and thus give him a profit. When the "spread" comes he closes the "deal" by selling in St. Louis and buying in Chicago and thus takes his profit from the difference between the "spread" and the condition which existed at the time of buying. Of course, the "quotations" which result from operations of this sort are honest indications of the workings of a market to which the world looks for guidance! The Chancellor naturally will regard such quotations as evidential of the purpose of the complainant to "inculcate principles of justice and equity in trade!" It is conceded all around by the witnesses that a "spread" is mere gambling. There cannot be the faintest suggestion of a bona fide transaction in the affair. There can be no rights of property in trade quotations which merely evidence a "spread," and a court of equity will not lend its hand to protect the complainant in an effort to create a monopoly for the dissemination of such creations of nefarious practices.

Look at the feature of "scalps." The term is applicable to members of the Board who stand in the wheat pit, for instance, and trade for their own account on small profits, and small losses on the fluctuations in the "market." They trade for an eighth or sixteenth profit or loss and make rapid "turns" on the market. They are members of the Board. They, in many instances, do not have offices, but being members, visit the "pits" daily and engage in the "scalping" business. They may trade in thousands of bushels of grain, in a day, but while the trades are all for future delivery, they are all closed out before the quotation-making hours expire, and each scalper wraps the drapery of his couch about him, that night, with all trades closed and himself moderately exhilarated by his successes, or somewhat cast down by his defeats. How many scalps are made in the "pits" per day no one can tell, but they are almost innumerable. How many quotations originate from trades of this sort, no one can tell, but there must be hundreds each day, if not thousands. That the complainant seeks to maintain an exclusive ownership in this sort of property is doubtless prompted by its chartered, pre-rogative to "acquire and disseminate valuable commercial and economic information," but I take it that the quotations, *pro hac vice*, are to be looked upon only as the variations in the fluctuations of a gambling enterprise.

Consider **"stop orders,"** and **"transfer trades."** Just what proportion of quotations is made in this way cannot be indicated, but it must be very large. Now, a "stop order" cannot very well be said to result in a quotation which will evidence dealing in a commodity so as to make a price for the guidance, or information of merchants and legitimate traders. The witnesses explain that "stop orders" are sent to limit losses. Where deals are made on stop orders, they necessarily exclude the idea of a delivery. They are notice of an intention merely to gamble in the commodity. The broker who receives the "stop order" with the order for the trade knows from its receipt, that his customer is merely gambling in the commodity.

"Transfer trades" are stated by the witnesses to be very frequent in the "pits," and they state that these transfers may involve a great many parties and may finally wind up by transferring the deal from one straight across to the other, and that this occurs where "Rings" are not made. It does not happen in "ringing," because they do not like to break the "Rings," but if the Ring is not made up, they may settle by transferring directly from one to the other and thus settle the matter entirely between all parties concerned in the transaction. And they state that where a "Ring" does not go through, then they resort to the transfer system, and this is an-

other extensive means of "settling" contracts and putting them out of existence.

The cap sheaf in the complainant's methods is found in "ringing" the trades made in the "pits." That with the system of "ringing" future contracts maintained and the settling of differences through a "clearing house" provided for the purpose kept up, a complainant can be found to claim that quotations made in a business having such incidents are entitled to protection in equity, shows how great must be the hardening processes of the chilling winds of Chicago.

The ringing system was invented by the complainant to prevent deliveries. Its object was to do away with deliveries and cancel transactions between members. To enable this to be done, a "clearing house" is provided, through which differences are settled on the basis of a clearing house price fixed each day by the complainant. The great majority of trades are rung out The clearing house is provided to cancel all transactions that can be cancelled. The price of settlement is arbitrarily fixed each day. The entire system has no feature suggestive of anything else but the jugglery of an aggregation of gamblers.

With the system of ringing contracts and the clearing house system of settlements of differences, one may trade in the pits of the complainant all of his life and never be called on to receive or deliver one bushel of grain, provided he merely transfers his con-

tracts from one month to another as they approach the time of delivery. The tremendous proportions of this showing made against the complainant cannot be indicated by an abstract of the evidence or extended argument. It must be explored in all of its details to be completely appreciated.

The evidence upon a merely casual examination, discloses the proportions of the "business" which would be impossible without the ringing system and the clearing house. In the year 1900 clearings amounted to over $62,000,000, and balances paid on settlements to nearly $24,000,000. The evidence affords a basis of calculation from which the "business" done in the "pit" of the complainant for the year 1901 amounted to over 7,000,000,000 bushels of grain, or more than twice the entire crop of the United States for the year. It is monstrous to contemplate "quotations" of prices made in mere "futures" as worthy of any consideration in equity.

Now, all of these many devices and practices are known to the complainant. They have been adjudged to be "bucket shop" practices, but whether or not they come quite up to the technical standard of the "bucket shop" as denounced by statute, they are practices highly detrimental in character, contrary to public policy, and subversive of good morals.

The aid of equity is invoked as against alleged bucket shop proprietors, and the complainant seeks to put itself upon the plane of high public policy, where

equity sometimes aids a party who is equally guilty with his opponent. But, as has been adjudged by a learned justice, equity will here refuse a helping hand. The acts complained of find their source in the transactions tolerated and fostered by the complainant. To destroy the bucket shop, the visitation must be upon the gamblers of the board of trade; when that is had, and not before, will the use of trade quotations cease.

It will not do to say that the "continuous quotations" are **news**, and therefore that part which is good, serving a lawful purpose, has, inherent in itself, the foundation of a property right in the disseminator. The **news** is simply the publication of bets made upon the future. The **news** is simply the publication of the proceedings had in a place whose conduct is prohibited by law. The permission by the board of trade given to grain gamblers to operate in its pits constitutes "bucket shopping" as clearly as can be constituted by the comprehensive terms of the criminal statute and the sweeping adjudications upon the statute. It is idle to concede that gambling is had in the "pits," and then assert that because some trades are made, which are not gambling trades, the property right is to find its foundation in the fact that some good may be derived from the quotations as **news** for the guidance of honest and legitimate traders. The vice of the argument is that the "quotations" are not **news** in the true sense, and they are not

disseminated as news to benefit the commercial world, but as information for the guidance or stimulation of persons of all classes throughout the country who may feel disposed to gamble in the "pits" of the board through the agency of its members operating under its "rules." It is matter of common knowledge that the customers of the brokers, members of the board, who make their trades through such brokers have, as a rule, no relations elsewhere with the commercial world. They gamble in grain, take "flyers" in grain, speculate upon the mere "difference in the market," and find their guidance and stimulant in the continuous quotations. Furthermore, there is abundant legal ground for the contention that the record demonstrates that the "continuous quotations" are emanations from a common gaming house. This may seem a harsh characterization of the "pits" of the Chicago Board of Trade, but it is justified by the facts. That a house where persons are permitted habitually to assemble to bet and win or lose money, whether with each other, or with the owner, is, in the meaning of the law, a gaming house and therefore a common nuisance, is too well settled and plain for discussion. **Ballinger vs. Commonwealth**, 98 Ky. 574. That the keeping of places where persons are procured or permitted to assemble together for the purpose of betting and winning and losing money falls within both the letter and spirit of the criminal code admits of no controvery. **Swigart vs. People**, 154 Ill.

234. A scheme lawful in itself cannot be made a cover for one that is unlawful. **Fair Ass'n vs. Carmody,** 151 Mo. 566. **"If the house in question had been opened and used for a double purpose, viz., as an honest social club for those who do not desire to play, as well as for the purposes of gaming for those who did, it would not the less be a house opened and kept for the purpose of gaming." Jenks vs. Turpie,** 13 Q. B. Div. Law Rep. 505. Were "quotations" gathered in a gaming house, going to show that bets were made and upon what contingency, would the proprietor have a property right in such quotations? Betting upon race tracks, which are no more gaming houses than are the "pits" of the Chicago Board of Trade, has led to the dissemination of news of the prices, rates, fluctuations and conditions of such betting. The **news** relates also to the immediate present. Were the race track owner to collect the "quotations," would he have a property right in such "quotations?" Why not? They are **news.** They inform the horse breeder that the particular strain of blood coursing through some horse's veins may be depended upon as a feature of successful breeding. Blood will tell, it is said, and why not give the exclusive right to the disseminator of the welcome news that the blood of Lexington is as potent in his descendants as it was in the veins of the blue-blooded ancestor?

This **news** is thus capable of serving a useful pur-

pose. There may have been many people at the track who did not bet. Horse racing is not unlawful. Speculation in grain may not be unlawful. Some dealers in the pit may have contemplated actual deliveries.

The fact that some did not bet ought not to qualify the nature of the news of the result of the races and the conditions of the betting. Therefore, the proprietor of the race track should have a property right in the news capable of being gathered and disseminated from the track. The *reductio ad absurdum* is thus complete.

Equity does not concern itself with the general morals of a complainant. But it does refuse aid where the taint of immorality pervades a right claimed to be within its protection. Gambling in grain and provisions is not the less to be reprobated because the reports of its conditions may have some useful purpose.

A board of trade ought not to be afforded an exclusive right in quotations of prices not made by itself, but by its members, who make them, in the great multitude of instances, merely for gambling purposes. It is true that there is "some soul of goodness in things evil would we observingly distil it out," but equity ought not to aid where it can only stand aghast at the full measure of iniquity the con-

duct evidences of him who seeks its beneficent protection.

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